

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2916 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

-----

VALLABHAI RAMJIBHAI

Versus

STATE OF GUJARAT AND ANR.

-----

Appearance:

Shri M.I. Hava, Advocate, for the Petitioners

Shri A.G. Uraizee, Asst. Govt. Pleader, for the Respondents

-----

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/09/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No. 1 herein) on 8th February 1993 under sec. 34 of Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By its impugned order, respondent No. 1 set aside the order passed by the Competent

Authority at Surat (respondent No.2 herein) on 20th November 1986 and communicated on 28th November 1986 under sec. 8(4) thereof declaring the holding of the land-holders to be in excess of the ceiling limit by 528 square meters. By its impugned order, respondent No.1 declared the holding of the land-holders to be in excess of the ceiling limit by 2820 square meters.

2. The facts giving rise to this petition move in a narrow compass. Petitioners Nos. 1, 2 and 3 and one Revaben filed their separate declarations in the prescribed forms under sec. 6(1) of the Act with respect to their respective holding within the urban agglomeration of Surat. They claim to be the heirs and legal representatives of one Ramjibhai who appears to have breathed his last prior to coming into force of the Act. It appears that the declarations of petitioners Nos. 1, 3 and Revaben were processed simultaneously by respondent No. 2. After observing necessary formalities under sec. 8 of the Act, by his order passed on 20th November 1986 under sub-section (4) thereof, respondent No.2 declared the combined holding of the land-holders to be in excess of the ceiling limit by 528 square meters. Its copy is at Annexure A to this petition. It appears that the declaration filed by petitioner No.2 was processed little later. It was disposed of in view of the order at Annexure A to this petition by the order passed by respondent No.2 on 27th August 1987. Its copy is at Annexure C to this petition. The order at Annexure A to this petition appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. A show-cause notice thereupon came to be issued on 20th September 1989 calling upon Revaben through her heir and legal representative (petitioner No.1 herein) to show cause why the aforesaid order at Annexure A to this petition should not be revised. Its copy is at Annexure E to this petition. It appears that on behalf of the land-holders an adjournment was sought for filing a reply to the show-cause notice. It appears that thereafter no reply came to be filed and no hearing took place. By the order passed on 8th February 1993, respondent No.1 set aside the order at Annexure A to this petition and declared the holding of the land-holders to be in excess of the ceiling limit by 2820 square meters. Its copy is at Annexure F to this petition. That aggrieved the present petitioners. They have therefore approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure F to this

petition.

3. It appears that no opportunity of hearing was given to the land-holder before passing the order at Annexure F to this petition. It deserves to be quashed and set aside only on that ground alone.

4. Even on merits the order at Annexure F to this petition cannot be sustained in law. The reason therefor is quite simple. In his order at Annexure A to this petition, respondent No.2 relied on the report of the Maintenance Surveyor regarding the proposed road passing through the lands of the land-holders. The author of the impugned order at Annexure F to this petition found that evidence to be insufficient. If that be so, the matter ought to have been remanded to respondent No.2 for giving an opportunity to the land-holders to bring some other reliable evidence on record in that regard. When respondent No.2 relied on the evidence, the land-holders might not have thought it fit to bring some other material on record in support of their case. In that case, an opportunity to lead further evidence ought to be given to the land-holders if the material brought on record is not found reliable unless no other material might possibly be produced. It was not found by the author of the impugned order at Annexure F to this petition that no other material could be brought on record in that regard. The impugned order at Annexure F to this petition cannot therefore be sustained in law on this ground also.

4. On finding the impugned order at Annexure F to this petition unsustainable on the aforesaid grounds, ordinarily the matter should be remanded to respondent No. 1 for restoration of the proceeding to file and for its fresh disposal according to law. Learned Advocate Shri Hava for the petitioners has however submitted that the proposed road prepared by the Surat Urban Development Authority in the development plan has been given up and the question of exclusion of the area covered by the road and the road margin would not arise. He has further submitted that the declarants of the holding have practically been treated as an association of persons though they were co-owners of their share in the subject-matter of this petition. As rightly submitted by learned Advocate Shri Hava for the petitioners, co-owners cannot be regarded as an association of persons in view of the binding Division Bench ruling of this Court in the case of Chhaganlal Trikamdas Thakker and others v. Competent Authority, Rajkot and others reported in 1994(1) Gujarat Current Decisions 1. This aspect of the

matter has not been considered by respondent No.2 from this angle.

5. Besides, as rightly submitted by learned Advocate Shri Hava for the petitioners, the constructed residential property should be excluded from the holding of the land-holders in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It transpires from the orders at Annexures A and F to this petition that the constructed residential properties are included in the holding of the land-holders. They deserve to be excluded.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure F to this petition cannot be sustained in law. It has to be quashed and set aside. However, the order at Annexure A to this petition need not be restored. The matter has to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

7. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 8th February 1993 at Annexure F to this petition is quashed and set aside. The order at Annexure A to this petition is however not restored. The matter is remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Since the matter is old, it would be desirable on the part of the Competent Authority at Surat to dispose of the case as expeditiously as possible preferably by 31st March 1997. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

-----